

**STATEMENT OF
PAUL ROSENZWEIG
ACTING ASSISTANT SECRETARY FOR POLICY DEVELOPMENT
U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL
OPERATIONS**

**HEARINGS ON CURRENT ISSUES IN U.S. REFUGEE PROTECTION AND
RESETTLEMENT**

**WEDNESDAY, MAY 10, 2006
WASHINGTON, D.C.**

Chairman Smith, Ranking Member Payne and Members of the Subcommittee on Africa, Global Human Rights and International Operations: I would like to thank you for the opportunity to appear before you today as you examine current issues related to the United States' protection and settlement of refugees. I appreciate the Subcommittee's attention to this important issue, and I would like to assure Members of the Subcommittee that the Department of Homeland Security (DHS) is steadfastly committed to fulfilling its mission of providing protection to deserving refugees while safeguarding our Nation's security.

I now would like to turn to the specific issues that the Subcommittee listed in its invitation for this hearing.

Implementation of the Refugee Provisions of the North Korean Human Rights Act of 2004

The North Korean Human Rights Act of 2004 requires the U.S. Government to facilitate the filing of applications for refugee resettlement by North Korean citizens in need of protection abroad. DHS, through its component agency, U.S. Citizenship and Immigration Services (USCIS), plays an important role in adjudicating eligibility for refugee resettlement. DHS interviews North Korean refugee applicants granted access to the United States Refugee Admissions Program by the Department of State and adjudicates these applicants' eligibility for resettlement in the United States.

In addition, the USCIS Asylum Division fully implemented the asylum-related provisions of the North Korean Human Rights Act in October 2004, the same month the legislation became effective. In accordance with Section 302 of the Act, which provides that asylum applicants from North Korea are not to be rendered ineligible for asylum in the United States on account of "any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea," (Section 302(a)), the Asylum Division issued clarifying guidance that Asylum Officers shall not automatically treat a national of North Korea as also being a national of South Korea. In addition, in accordance with Section 305 of the Act, which requires DHS to report annually for

the next five years “the number of aliens who are nationals or citizens of North Korea who applied for political asylum and the number who were granted political asylum,” the Asylum Division established a new protocol for entering nationality and country codes into its case management system to clearly differentiate between North and South Korean citizens. The Asylum Division has also made corresponding changes to its Asylum Officer Basic Training Course.

Implementation of the Training Provisions Mandated by the International Religious Freedom Act of 1998

Several sections of Title VI of the International Religious Freedom Act of 1998 (IRFA) mandate training on international religious freedom issues for various DHS officers. Specialized training is required for refugee adjudicators (section 602), asylum officers (section 603), and any immigration officers working in the expedited removal context (section 603).

Training of USCIS Refugee Adjudicators

IRFA amended Section 207 of the Immigration and Nationality Act (INA) to require that USCIS “provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.” The training must include “country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.”

To comply with IRFA, USCIS considered various long-term and short-term solutions for ensuring that all Immigration Officers who adjudicate refugee applications receive training equivalent to that of Asylum Officers. Asylum Officers usually receive approximately five weeks of specialized training related to U.S. asylum law, international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles. As an interim measure, selected overseas Immigration Officers attended the Asylum Officer Basic Training Course in October of 1999 and May of 2000. After careful evaluation, the Office of International Affairs determined that the differences between asylum and refugee processing were significant and that a specialized training program was needed to train personnel for refugee adjudications. This resulted in the development of the Refugee Application Adjudication Course (RAAC), first held in Vienna, Austria in July-August 2001, and repeated twice in the spring of 2002.

Most recently, with the creation of the Refugee Corps and hiring of full-time Headquarters staff dedicated to refugee adjudications in the fall of 2005, the refugee training was again expanded and improved. New refugee officers must successfully complete the Refugee Officer Training Course to conduct overseas refugee adjudications. The course consists of in-depth training on refugee law, and much of the material is drawn from the Asylum Officer Basic Training Course. This three-week training covers all grounds, including religion, on which a refugee claim may be based, and involves specialized training on international human rights law, non-adversarial

interview techniques, and other relevant national and international refugee laws and principles. During the training, students receive specialized instruction on religious persecution issues. For example, as part of the last two sessions, members of the United States Commission on International Religious Freedom (CIRF) conducted presentations on IRFA. In addition, the training encourages further discussion of religious persecution whenever possible. USCIS has updated the primary lesson plan to reflect recent guidelines issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) on religious persecution claims, as well as recent developments in refugee law. More than 30 officers have completed the training to date.

In addition, USCIS provides preparatory training to volunteer officers who are embarking on short-term overseas assignments for refugee adjudications. This “circuit ride” training includes detailed information on religious topics that will be encountered during the overseas assignment and, like the training, encourages further discussion of religious persecution whenever possible.

Training of USCIS Asylum Officers

USCIS also provides extensive training to Asylum Officers to prepare them to perform their duties of adjudicating asylum claims. As previously noted, the training covers all grounds on which an asylum claim may be based, including religion. Asylum Officers receive approximately five weeks of specialized training related to international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles.

With the passage of IRFA, the training program expanded to incorporate information about IRFA, as well as specialized training on religious persecution issues. The lesson on religious persecution includes an overview of IRFA with a focus on the provisions relating to refugee, asylum, and consular matters, a discussion of violations of religious freedom as identified in IRFA, an examination of legal precedent regarding asylum eligibility based on religious persecution, and an overview of resources on country conditions relating to religious freedom. The lesson plan is updated regularly to include developments in policy and case law and has incorporated UNHCR’s guidelines on the adjudication of religious-based protection claims issued in April 2004. Further discussion of religious persecution is included whenever relevant throughout the five-week training. Additionally, continuing education on religious persecution is carried out at the local asylum offices during their mandatory four-hour weekly training sessions. Most recently, the Asylum Division and the Office of the Chief Counsel initiated efforts to conduct updated training on IRFA and religious persecution for USCIS Asylum Officers. This collaborative effort will be piloted in the one of the field offices and will then be conducted in the other Asylum Offices.

Training of Customs and Border Protection (CBP) Officers

Section 603 of IRFA mandates training of immigration officers working in the expedited removal context concerning the nature of religious persecution abroad and the right to freedom of religion. CBP has developed standardized training, as part of its larger asylum/credible fear training, in order to comply with IRFA’s guidelines.

CBP designed a comprehensive and standardized basic training course for secondary processing by inspectors. The training includes a module on "Referring Credible Fear Cases," and is presented to CBP officers at the Federal Law Enforcement Training Center who will be working on Advanced Admissibility Teams. This hour-long training, which was first presented in January 2006, has been provided to 200 CBP officers to date. This course was designed to ensure that all officers who may be involved in the expedited removal/credible fear process under INA section 235(b) understand the need for sensitivity in handling the cases of individuals who claim a fear of persecution, including persecution based on religion. The module has also been added into the curriculum a new CBP officer receives during basic training at the academy.

Prior to the expansion of expedited removal to certain aliens apprehended between ports of entry, CBP developed specialized training for Border Patrol agents on expedited removal and the credible fear process. This training was based on earlier programs developed for CBP inspectors and benefited from the lessons learned by DHS in implementing the expedited removal program at the ports of entry. The Border Patrol training explains that while expedited removal grants Border Patrol the authority to formally remove certain aliens from the United States without further hearing or review, this authority also carries with it the critical responsibility of identifying those individuals who have invoked access to protection mechanisms through an expression of fear or intention to apply for asylum and thus require a credible fear interview by an Asylum Officer. CBP relies on USCIS Asylum Officers to present to Border Patrol agents the credible fear portion of the expedited removal syllabus. Border Patrol training also provides an overview of IRFA.

Additionally, throughout the training, Border Patrol agents are taught not to attempt to evaluate the credibility or probity of the alien's claim, but are trained to take special care to ensure that every indication of fear of return is explored and recorded before proceeding. In the expedited removal context, Border Patrol agents are responsible for ensuring that anyone who indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of returning to his or her country is referred to an asylum officer. The mandatory closing questions contained on Form I-867B are designed to help the agent determine whether the alien has such a fear. If an alien asserts a fear or concern that appears unrelated to an intention to seek asylum or a fear of persecution, the agent is taught to consult with an asylum officer to determine whether to refer the alien. Agents are taught to err on the side of caution and refer to the asylum officer any questionable cases.

Asylum Overview Training for DHS Immigration Officers

The Office for Civil Rights and Civil Liberties within DHS is currently developing a basic training Asylum Overview Course, which will be provided on-line or through CD-ROM to a range of immigration officers who interact with asylum seekers. This includes officers and staff in detention facilities and CBP officers and Border Patrol agents in the expedited removal context.

The training will address a recommendation of the CIRF in its Report on Asylum Seekers in Expedited Removal, issued in February 2005. The CIRF recommendation was that DHS ensure

that personnel in institutions where asylum seekers are detained are given specialized training to better understand and work with a population of asylum seekers, many of whom may be psychologically vulnerable due to the conditions from which they are fleeing.

Having completed the course, DHS immigration officers will be able to: explain the U.S. Government's responsibilities to asylum seekers; identify common characteristics of asylum seekers; recognize behaviors that may be responses to persecution; and identify effective strategies to facilitate communication with asylum seekers.

The course will be designed to assist DHS personnel in carrying out their law enforcement duties in a way that is mindful of U.S. obligations toward asylum seekers.

Inadmissibility Provision for Foreign Government Officials Who Have Committed Particularly Severe Violations of Religious Freedom

Section 604 of IRFA created a new ground of inadmissibility applicable to foreign government officials who have committed particularly severe violations of religious freedom. The applicability of this charge was enhanced with the passage of the Intelligence Reform and Terrorism Prevention Act in December 2004. This Act eliminated the requirement that the prohibited activity must have occurred within two years of entry.

Because this inadmissibility ground applies to foreign government officials, the implementation of this authority requires close coordination between DHS and the Department of State. This authority is most often invoked at the time of consideration of a visa application by Department of State consular officials posted overseas. For example, DHS worked in conjunction with the Department of State, Office of International Religious Freedom to prevent the issuance of a visa to the Chief Minister of the State of Gujarat, India in March 2005. That individual was inadmissible under the IRFA provision because he failed to stop or prevent the deaths of 2,500 Muslims during religious riots in 2002. In cases in which there is credible evidence to suspect applicability of this ground of inadmissibility, DHS enters the information into the lookout system.

The Immigration and Customs Enforcement (ICE) Human Rights Violators and Public Safety Unit within the Office of Investigations and of the Human Rights Law Division within the ICE Office of the Principal Legal Advisor provides DHS with dedicated resources to prevent human rights abusers from finding safe haven in the United States, including those who have committed violations of religious freedom. In April, ICE held a Human Rights Conference to provide training to 130 attorneys and special agents designated nationwide to handle cases involving persecutors and human rights abusers. Discussions regarding the legal authorities available to assist in the removal of human rights abusers from the United States included an overview of the inadmissibility ground for foreign government officials who have committed particularly severe violations of religious freedom.

Implementation of "Wet Foot/Dry Foot" Policy

The “wet foot / dry foot” policy describes the jurisdictional reach of certain provisions of the INA, namely provisions that define who is treated as an applicant for admission to the United States. Migrants that make landfall in the United States, regardless of nationality, are eligible to seek asylum and other immigration benefits that migrants who remain offshore may not seek. So, when people speak about changing the “wet foot / dry foot” policy, they are actually speaking about changing the way in which the U.S. government interprets and enforces the law.

In 1993, the U.S. Supreme Court held that neither the protection-related provisions of the INA nor Article 33 of the Refugee Convention apply extra-territorially. As a matter of policy, however, the US Government affords migrants interdicted at sea an opportunity to seek and receive protection from persecution or torture. If after an interview at-sea a USCIS officer determines that an interdicted migrant has a credible fear of persecution or torture, DHS transports that migrant to its facilities in Guantanamo Bay for further screening and evaluation. If the migrant is then determined not to be at risk of harm, the migrant may be repatriated to his country of nationality. If, however, the migrant is determined to be in need of protection, he may be resettled in a third country. Migrants interdicted at sea are not brought to the United States, in keeping with the overall U.S. Government policy of preserving lives by discouraging migrant smuggling and dangerous sea travel, while encouraging safe, orderly, and legal migration.

The “wet foot / dry foot” distinction does not flow from the Cuban Adjustment Act of 1966 or the so-called Cuban Migration Accords. The Cuban Adjustment Act allows Cuban nationals who have been present in the United States for at least one year after admission or parole and who are admissible as immigrants to apply for lawful permanent residence (LPR) status. The reason Cuban migrants are not returned to their country of nationality upon arriving in the U.S. – as is the case with illegal migrants of other nationalities – is because the Castro regime will not accept their return. As a consequence, these migrants are eligible for lawful permanent resident status under the Cuban Adjustment Act.

Status of Procedures for Waiver of Inadmissibility for "Material Support" and the General Level of Refugee Funding

Under Section 212(a)(3) of the INA, aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA defines terrorist activity to include, among other things, any use of explosives, firearms, or other weapons or dangerous device with intent to endanger the safety of individuals or to cause substantial damage to property, except when done for personal monetary gain. The definition of terrorist organization refers not only to organized groups officially designated as such by the U.S. Government, but also to one or more individuals engaged in terrorist activity (so-called “Tier III” terrorist or undesignated organizations). The law provides no exception for motivation, and thus the statutory definition could include groups that are engaged in opposition to repressive regimes.

The INA does contain a discretionary exemption to the material support inadmissibility provision. Under this provision, the Secretary of Homeland Security or the Secretary of State, in

consultation with each other and with the Attorney General, is empowered to make an unreviewable discretionary determination that the terrorism inadmissibility provision does not apply with respect to material support an alien has afforded to an organization or individual.

Extensive consultations among DHS and the Departments of State and Justice recently culminated in the Secretary of State exercising her discretionary authority to not apply the material support inadmissibility provision to one group of refugees identified in the President's annual report to Congress: Burmese Karen refugees at the Tham Hin camp in Thailand who provided material support to the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA). These refugees have been identified as a population of special humanitarian concern to the United States due to the privations they have experienced during their flight from Burma and their residence at the Tham Hin camp. The decision to exercise the material support inapplicability provision is based on the collective assessment that this exercise of discretion serves the foreign policy interests of the United States and that the admission of these refugees will not compromise our national security.

Before any applicant qualifies for the material support inapplicability provision being exercised by the Secretary of State, DHS adjudicators must be satisfied that the applicant is otherwise eligible for refugee resettlement and does not represent a danger to the security of the United States. In light of this development, we anticipate that members of DHS' Refugee Corps will travel to Thailand within the next several weeks to begin conducting interviews with refugee candidates. In cooperation with the Department of State, USCIS, which is directly responsible for refugee processing, is actively making the necessary preparations for this undertaking, including both logistical arrangements on the ground in Thailand and provision of appropriate training to its refugee officers.

It is the Administration's view that important national security interests and counter-terrorism efforts are not incompatible with our nation's historic role as the world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security imperatives, there have been recent changes to the law as well as to the process and we continue to work on ways to harmonize these two important policy interests. It was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensuring the harmonization of national security interests with the refugee program.

Conclusion

I thank Members of the Subcommittee for the opportunity to address them today on these important issues, and I stand ready to answer any questions.